

September 29, 2006

**VIA FAX AND US MAIL**

Jeff S. Jordan, Esq.  
Supervising Attorney  
Complaints Examination & Legal Administration  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463-0001

Re: MUR No. 5805

Complaint by Mr. Eddy Shalom against City of Santa Clarita, California

Dear Mr. Jordan:

This letter is the City of Santa Clarita's ("City's") Response to the Complaint filed against the City in the above-captioned action.<sup>1</sup> The City did not violate any federal laws, as alleged in the Complaint. Instead, it acted appropriately and legally at all times. The City requests that the FEC deny the complaint in its entirety.

Introduction and Factual Background

The City is engaged in a fight to stop the expansion of a very large sand and gravel mine directly next to city limits, in the "Soledad Canyon" area. The city has taken several disparate actions as part of its multi-pronged approach to limit expansion of this mine. As part of this fight, the City has engaged in litigation against the mine operators, annexed land next to the mine, and purchased surface land rights for the mine area. The City has also engaged in active discussions with state and federal officials to attempt to garner support for the efforts against the mine.

The federal government, however, actually owns the mining rights. In an attempt to protect the City against the effects of the mine, Congressman Howard P. "Buck" McKeon introduced legislation that would block further mining on that territory. Congressman McKeon's district includes the City. This legislation is termed House Resolution 5471 ("HR 5471").

<sup>1</sup> I am responding to the Complaint on the City's behalf, per the Statement of Designation of Counsel that will be filed under separate cover.

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After Congressman McKeon introduced the legislation, the City wished to encourage its citizens to contact Congressman McKeon to ask him to continue to support the bill and push it through Congress. The City also wished to raise community awareness about the mine and to generate support for the legislation.

Accordingly, the City displayed banners on prominent locations within the City stating "Thank you, Buck, for HR 5471! No Mega Mining in Soledad Canyon."<sup>2</sup> The banners were intended to encourage City citizens to contact Congressman McKeon about the mine, and to raise general awareness about the mine.

These banners were hung for a total of 31 days, from July 1 through July 31, 2006. They were removed by August 1, 2006.

#### Procedural History

After the banners were placed in the City, certain members of the community raised questions about the banners' legal status. In order to respond to these community concerns, the City sent an advice request to the FEC seeking to confirm the City's opinion that the banners complied with federal law.<sup>3</sup> The FEC declined, however, to provide formal written advice in response to the City's request. Representatives of the City Attorney's office and City staffers spoke with FEC General Counsel staff on July 20, 2006 regarding the advice letter request, and were informed at that time that the FEC would not be issuing an opinion. Mr. Shalom subsequently filed the instant complaint.

#### Legal Discussion

The complaint alleges that the banners violate federal election law because they are an impermissible use of city funds for endorsements or advertisements for Congressman McKeon. The banners, however, complied fully with federal election law. They were not "advertisements" for Congressman McKeon, but were attempts to push forward legislation that the City supports. The banners were not "express advocacy" under 11 CFR 100.22, and were not prohibited coordinated communications under 11 CFR 109.21.

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<sup>2</sup> A copy of the banner text is attached hereto as Exhibit "A."

<sup>3</sup> A copy of that advice letter request is attached hereto as Exhibit "B."

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*No Express Advocacy*

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The banners are clearly not express advocacy for a candidate, and accordingly are not election advertising materials. Express advocacy for a candidate means that the communication uses clear words advocating the election or defeat of a candidate.<sup>4</sup> To constitute a violation, the communication must, "when taken as a whole and with limited reference to external events, such as the proximity to the election, ... only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates because (1) the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates(s) or encourages some other kind of action."<sup>5</sup> 11 CFR 100.22(b)(1) and (2). The regulation gives examples of such phrases as "vote for" "re-elect" and "cast your ballot for" as phrases that expressly advocate under this definition.<sup>6</sup>

The phrase "thank you," used in the banners, is clearly not express advocacy under this definition. It does not encourage voters to cast votes for Congressman McKeon, or to vote against him. It merely thanks him for introducing legislation to assist the City in its fight against the mine. "Thank you," as stated in this banner, was not advocacy for the Congressman's re-election.

*No Coordinated Communication*

Furthermore, the banners were also not a coordinated communication with Congressman McKeon's campaign. A coordinated communication is prohibited under 11 CFR 109.21. However, the banners do not meet this standard for two reasons. First, a communication is only a prohibited coordinated communication if it is made within 90 days of an election.<sup>7</sup> These banners were taken down by August 1, so the communications were not made within 90 days of the November 7, 2006 election.

Second, a communication is a prohibited coordinated communication if it was made in concert with the elected official, the official's campaign, or the campaign's

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<sup>4</sup> 11 C.F.R. 100.22.

<sup>5</sup> 11 CFR 100.22(b)(1) and (2).

<sup>6</sup> 11 CFR 100.22.

<sup>7</sup> 11 CFR 109.21(c)(4)(i).

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party.<sup>8</sup> These communications were not made in concert with Congressman McKeon, his staff or campaign, or any political party.

Accordingly, the banners were not prohibited coordinated communications.

Conclusion

As explained above, the complaint in his matter is meritless. The City's banners complied with all federal election laws. The FEC should take no action on this complaint.

Please feel free to contact me with any questions or concerns.

Sincerely,

BURKE, WILLIAMS & SORESENSEN, LLP

*Carl K. Newton/sj*

Carl K. Newton

CKN/sjw  
Enclosure

cc: Ken Pulskamp, City Manager

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<sup>8</sup> 11 CFR 109.21(a).

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# THANK YOU BUCK!

## For HR 5471



No Mega Mining in Soledad Canyon

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EXHIBIT B

City of  
Santa Clarita

23920 Valencia Blvd  
Suite 300  
Santa Clarita  
California 91355-2196  
Website www.santa-clarita.com

Phone  
(661) 259-2489  
Fax  
(661) 259-8125



July 11, 2006

Federal Elections Commission  
Mr. Michael E. Toner, Chairman  
999 E Street, NW  
Washington, DC 20463

Dear Chairman Toner,

I am writing to request that the Federal Election Commission (FEC) provide the City of Santa Clarita with an Advisory opinion concerning allegations that the City is in violation of the Federal Election Campaign Laws, Title 11, Section 100.22 (a) & (b) and Section 441 (b).

By way of background, in 1989 the Federal government awarded Cemex a 20-year contract to extract 56 million tons of sand and gravel from a project site located in our community, known as the Soledad Canyon Sand and Gravel Mining Project. This mine, as proposed, would be the largest aggregate mine ever permitted by the Federal Bureau of Land Management (BLM) and greatly reduce our quality of life. As you can imagine, the Soledad Canyon Sand and Gravel Mining Project is of vital concern to the City of Santa Clarita. The City of Santa Clarita has been, and continues to be in opposition of the project as proposed.

Because the City recognizes the significance of the Soledad Canyon (aggregate) area, the Santa Clarita City Council have remained open and willing to working with Cemex, ensuing in an outcome pleasing to both the City and Cemex. As part of this effort, federal legislation, H.R. 5471, The Soledad Canyon Mining Leases Adjustment Act was developed and has since been introduced by Congressman Howard P. "Buck" McKeon (R-CA-25). Consequently, the City of Santa Clarita recently embarked upon a program to engage the support of the residents, specifically for the advancement of the legislation, H.R. 5471 and to encourage the Congressman to strongly promote the legislation.

As part of the effort, *"THANK YOU BUCK, for H.R.5471-No Mega Mining in Soledad Canyon"* banners were created and are currently being displayed throughout the City limits; with the goal(s) being to first thank Congressman McKeon for the introduction of the legislation and second to hopefully peak the curiosity of the community to want to find out what H.R. 5471 is all about and what they can do support.

I am pleased to say that the City's objective of the banners has been achieved, by way of the many calls received from residents inquiring about H.R. 5471 and what they can do to help. However, I regret to have recently learned that the City's intent has been mistaken as candidate (Congressmen McKeon) endorsement by some.



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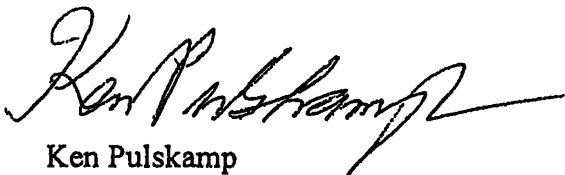
Mr. Michael E. Toner, Chairman  
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For the record, the banners are NOT and were NEVER intended to suggest or encourage a Vote For/Against Congressmen McKeon and therefore the City of Santa Clarita strongly believes that NO violation has taken place.

However, because the City of Santa Clarita takes any/all such allegations seriously the City is requesting that the Commission provide an official interpretation of the applicable FEC rule(s) and an advisory opinion concerning allegations that the City is in violation of the Federal Election Campaign Laws, Title 11, Section 100.22 (a) & (b) and Section 441 (b).

Should you desire additional information or like to discuss this in further detail please call me at (661) 255-4905.

Sincerely,



Ken Pulskamp  
City Manager

KRP:TC  
p/ms/ton/cemex/ltr to FEC

Attachments

cc: Federal Election Commission, Office of General Counsel  
City of Santa Clarita City Council  
Carl Newton, City of Santa Clarita City Attorney  
Michael Murphy, Intergovernmental Relations Officer

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